



# STATE OF INDIANA

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June 7, 2011

Mr. Drake W. Shunneson  
7880 Wicker Ave.  
Suite 300  
St. John, IN 46373

*Re: Informal Inquiry 11-INF-26; Records of the Schererville Police  
Department*

Dear Mr. Shunneson:

This is in response to your informal inquiry regarding Schererville Police Department ("Department"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* and other relevant statutes.

Your inquiry seeks advice regarding the Department's denial of your February 22, 2011, records request for "all records, reports or other info. . . . regarding an incident at Campagna Academy on 06/11/10 involving [four individuals]." You request also sought confirmation of whether or not charges would be filed against any of the listed individuals. On February 23rd, Department Chief Daniel Smith sent you a letter confirming receipt of your request and informing you that the Department would respond further by March 2nd. On March 2nd, Chief Smith sent you another letter stating that the Department would release to you "the incident sheet and the main narrative" for the incident, but that all "supplemental reports are considered investigatory records under IC 5-14-3-4(b)(1) and are excepted from disclosure. . . ." Chief Smith referred you to Department Records Manager Therese Bathurst regarding release of the incident sheet and narrative.

On March 7th, following a telephone conversation with Ms. Bathurst, you requested the related incident report and "main narrative" related to the June 11th incident, and contemporaneously sent a letter to Chief Smith in which you disagreed with the Department's reliance upon the investigatory records exception, I.C. § 5-14-3-4(b)(1), for withholding the supplemental reports. On March 10th, Chief Smith responded with a letter maintaining the Department's denial of access to the supplemental reports based on the investigatory records exception. Chief Smith requested that you forward any future correspondence in the matter to the Schererville Town Attorney, David M. Austgen. You

wrote to Mr. Austgen on March 18th and requested that the Department release to you the information listed in Ind. Code § 31-39-3-2. When you submitted your inquiry to this office on May 9, 2011, you had not yet received a response from Mr. Austgen.

Mr. Austgen responded to your inquiry via letter to this office dated May 23, 2011. In his response, Mr. Austgen states that on or around March 2nd, the Department released to you a copy of the incident report and narrative related to the June 11th incident. He notes that those records contain information that is “at least partially responsive” to Ind. Code § 31-39-3-2 and your request of February 22nd. Mr. Austgen maintains the Department’s denial of access to investigatory records based on Ind. Code § 5-14-3-4(b)(1). Mr. Austgen claims that he never received a copy of your March 18th letter until our office included it in the Notice of Informal Inquiry sent via facsimile on May 18th.

Generally, access to juvenile law enforcement records is restricted. *See* I.C. § 31-39-3-4. However, Ind. Code § 31-39-3-2 provides that some specific information, if contained in an agency’s records, is public information:

Public access to juvenile delinquency records

Sec. 2. The following information contained in records involving allegations of delinquency that would be a crime if committed by an adult is considered public information:

(1) The nature of the offense allegedly committed and the circumstances immediately surrounding the alleged offense, including the time, location, and property involved.

(2) The identity of any victim.

(3) A description of the method of apprehension.

(4) Any instrument of physical force used.

(5) The identity of any officers assigned to the investigation, except for the undercover units.

(6) The age and sex of any child apprehended or sought for the alleged commission of the offense.

(7) The identity of a child, if the child is apprehended or sought for the alleged commission of:

(A) an offense over which a juvenile court does not have jurisdiction under IC 31-30-1-2 and IC 31-30-1-4; or

(B) an act specified under IC 31-30-3-3.

*Id.* Thus, to the extent that the Department’s records contain the information listed in Ind. Code § 31-39-3-2, those portions of such records should be open to inspection and copying. If the remainder of any record is an investigatory record or otherwise nondisclosable, the Department should redact the confidential information and permit inspection of the non-confidential portion(s). The APRA requires public agencies to separate and/or redact the nondisclosable information in public records in order to make the disclosable information available for inspection and copying. I.C. § 5-14-3-6(a).

That said, it is my opinion that the Department need not create any new record in order to satisfy a request for the information listed in Ind. Code § 31-39-3-2 because that section pertains to information “contained in records” that, presumably, already exist. In section 5 of the APRA, which pertains to other law enforcement records, the General

Assembly clearly required that certain information “shall be made available for inspection and copying” regardless of whether or not it exists at the time of the request. Ind. Code § 5-14-3-5. I do not see such an intent expressed in the “contained in records” language applied in Ind. Code § 31-39-3-2.

I also agree with the Department insofar as it opted to withhold supplemental investigatory records regarding the June 11th incident. The investigatory records exception to the APRA provides that a law enforcement agency has the discretion to disclose or not disclose its investigatory records. An investigatory record is “information compiled in the course of the investigation of a crime.” I.C. § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations. Moreover, it does not apply only to an investigation where a crime was charged or an investigation where it was adjudicated that a crime was indeed committed. Instead, the exception applies to all records compiled during the course of the investigation of a crime, even where a crime was not ultimately charged, and even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157*. “Generally, a police report or incident report is an investigatory record and as such may be excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1).” *Id.* Based on these standards, it is my opinion that the Department did not violate the APRA by withholding its supplemental reports, provided that the Department released all information in its records that is listed in Ind. Code § 31-39-3-2.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack  
Public Access Counselor

cc: David M. Austgen